LAW OFFICE OF
JAMES H. JOHNSTON
SUITE 1000
1133 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

(202) 659-1911

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JUN - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 8, 1993

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The Secretary
Federal Communications Commission
Washington DC 20054

Re: Petition for Reconsideration
of Atlanta Interfaith Broadcasters,
Inc., MM Docket 92-266

Dear Mr. Secretary:

On behalf of Atlanta Interfaith Broadcasters, Inc., I transmit for filing an original an original and ten copies of its Petition for Reconsideration in the above-referenced proceeding.

Very truly yours,

James H. Johnston

James H. Johnston

cc: Chairman Quello
Commissioner Barrett
Commissioner Duggan
William Johnson

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of Implementation of Sections of the Cable Telecommunications Consumer Protection and Competition Act of 1992 Rate Regulation	)	MM Docket 92-266

PETITION FOR RECONSIDERATION OF
ATLANTA INTERFAITH BROADCASTERS, INC.

James H. Johnston
Suite 1000
1133 Connecticut Avenue NW
Washington DC 20036
(202) 659-1911

Counsel for Petitioner Atlanta
Interfaith Broadcasters, Inc.

Date: June 8, 1993

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factors: the number of subscribers; the number of regulated (nonpremium) channels; and the number of satellite-delivered channels.[1]

The formula for benchmark rates has the effect of making a satellite-delivered signal more valuable to cable systems than a local channel. An MSO which currently carries AIB advises that it could raise its benchmark rate by 8 cents per month or 96 cents per year by replacing AIB with a satellite-delivered signal. This means the MSO could get an additional $385,000 per year in revenue by replacing AIB with a satellite signal.

This aspect of the benchmark rate structure is unwise and unlawful. Giving substantial economic preference to satellite-delivered channels will destroy local-origination programming on cable; and, 45% of cable systems have such channels. Distinguishing between local-origination programming and satellite-delivered programming -- or, any distinction based on the mode of signal delivery -- is arbitrary and unlawful. Congress never intended that cable <u>rate regulation</u> would have the effect of controlling cable programming and sources.

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[1] The Commission's Instructions for Worksheet 1, Line 121 provide: "[A] 'satellite-delivered signal' is any cable program service or 'superstation' delivered on a communications satellite that is not a premium service (pay channel or pay-per-view channel). If a cable system picks up a satellite channel via a microwave or fiber optic feed, the channel remains a satellite channel if it is available by satellite unless it could be picked up directly over-the-air in the cable community."

II. Facts

AIB is a product of the rich religious traditions in Atlanta. It was incorporated in 1969. For the first twelve years, it produced interfaith programming that was aired free as public service programming by broadcast television stations in Atlanta. At the time, this programming counted towards the Commission's public service requirements.

As these requirements were relaxed, stations grew less interested in carrying AIB's programming. AIB, therefore, turned to cable. In 1981, it was allowed to program cable channel 8 on one cable system in Atlanta. Cable channel 8 carried twenty hours of programming per week from ten religious bodies: Baptist, Methodist, Presbyterian, Catholic, Jewish, Lutheran, Disciples of Christ, Assemblies of God, Episcopal, and Seventh-Day Adventists.

Since AIB has been open to, and used by, all faiths, its programming policies always prohibited financial solicitations or criticism of other religions . Its strict adherence to these policies and its quality programming made AIB popular and led to substantial growth. Today, it delivers via microwave a twenty-four hour per day channel to eleven cable systems that reach 500,000 households in the Atlanta metropolitan area. Its religious programming is interfaith, including Jewish and Islamic programs as well as programs from Christian denominations.

AIB remains a small, local nonprofit with a paid staff of eight and an annual budget of approximately $500,000. It has no financial arrangements with the cable systems that carry it. AIB receives some financing through contributions and grants. It also charges members for air time. Its rates range from $175 per hour to $300 per hour for prime time programming. This compares with $4,000 per hour that a local broadcast television station might charge for airing an hour of religious programming on Sunday morning.

Atlanta's cable subscribers prefer AIB to larger and better financed national competitors. One local religious broadcast television station[2] and at least five satellite-delivered religious networks[3] are available to cable systems in Atlanta. Yet, all eleven Atlanta cable systems have chosen to carry AIB rather than these others.[4]

Now, however, the Commission's benchmark rate structure threatens AIB's continued carriage because it allows cable

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[2] WHSG-TV, Channel 63 broadcasting from Monroe, Georgia is licensed to Trinity Broadcasting Network, Inc.

[3] These networks are: Vision Interfaith Satellite Network (VISN), American Christian Television System (ACTS), Trinity Network, New Inspiration, and Eternal World. VISN and ACTS are separate organizations with distinctive programming but they divide time on a single satellite channel. Trinity Network is under common ownership with WHSG-TV broadcasting from Monroe, and their programming is largely, if not completely, the same.

[4] The must carry provisions of the Cable Act will require carriage of the local religious station. In court proceedings, AIB is challenging the constitutionality of the Cable Act's "must carry" requirement for religious stations.

systems to charge higher rates for satellite channels. In the short run, there are only two ways for a cable system to meet the benchmarks: (i) lower rates to benchmark levels; and, (ii) increase the number of satellite-delivered channels.

Because AIB is a local-origination channel and because its programming mix changes, it assumes, for purposes of this submission, that it is not a satellite-delivered signal even though it may sometimes retransmit a satellite signal.[5]

After issuance of the Order, a multiple system operator (MSO) controlling eight of the eleven Atlanta systems with a total of 400,000 subscribers notified AIB of the effect that the benchmark rate structure would have on its continued carriage of AIB. It interpolated from the Commission's benchmark rates and provided AIB with the data incorporated in Appendix A.

Appendix A shows that the MSO's benchmark rates would increase by 8 cents per month or 96 cents per year if it

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[5] There are substantial threshold questions about the meaning of the term "satellite-delivered signal." Few, if any, cable channels transmit satellite-delivered signals 100% of the time. Most satellite networks allow cable systems to insert local advertising in specified time-slots. Others, set aside time for local-origination programming, such as local news and weather shows or alphanumeric information. Conversely, local-origination channels can incorporate satellite programs or they can share a cable channel with a satellite-delivered network. AIB has, from time to time, carried satellite programs on a regular basis and currently has one weekly satellite-delivered program.

were to replace AIB with a satellite-delivered channel -- such as one of the five religious networks the MSO has previously refused to carry.[6] The annual effect of this change to a system with 400,000 subscribers would be an increase in allowable revenue of about $385,000. This is significant financial incentive to replace AIB.

III. Exclusion of Local-Origination Channels from Benchmark Rates Is Arbitrary

The Order does not justify the discrimination. The Commission arrived at using three factors --subscribers, regulated channels, and satellite channels-- as the bases for benchmark rates through a statistical analysis, saying "[t]aken together, these three variables account for more than 60 percent of the variance in per-channel rates." Order, Attachment E at 11 FN 18.[7] In addition, the analysis showed that the price per channel declines as the number of subscribers and total number of channels increases. And finally, according to the analysis, "prices per channel increase as the number of satellite channels increases, which is consistent with both program costs for obtaining most satellite channels and with the relatively

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[6] Because three factors affect benchmark rates, the incremental value of a satellite signal changes from system to system. The incremental value of a satellite channel would be twice as large, $770,000 (16 cents per month or $1.94 per year), if AIB's MSO had only thirty regulated channels and ten satellite channels.

[7] A substantial 40 percent of the variance in per-channel rates is not accounted for by the analysis.

high value of those services to subscribers." Order, Attachment E at 11.[8]

The analysis did not consider the effect on rates of local-origination channels, although the information was available. The Commission's survey asked for information on five types of cable signals: 1) local broadcast; 2) distant broadcast; 3) satellite; 4) "PEG" or public, educational, and government; and, 5) "other" to include local-origination channels like AIB. A review of Schedule 7 in the data base from the survey shows that 45% of the surveyed systems reported that they carried at least one "other" channel. The Order does not explain why "other" channels were excluded from the analysis or from the benchmark rate formula.

AIB's experience with eleven cable systems serving 500,000 households demonstrates that local-origination programming is easily the equivalent of a satellite-delivered channel. The decision by cable operators to carry AIB instead of its satellite competitors can only be attributed to subscriber preference since AIB is free to the cable operator.

Failure to consider local-origination channels is

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[8] The analysis also indicated that results using other enumerated characteristics were either not significant or were not consistently so.

arbitrary in that it fails to account for the obvious fact that local-origination channels have the same effect on rates that satellite-delivered channels do.[9]

IV. The Distinction between Satellite and Local Channels Is Arbitrary

Establishing higher benchmark rates merely because the signal is transmitted via satellite is arbitrary. Benchmark rates were intended to simulate rates that would prevail if there were effective competition.

But in a competitive marketplace, the quality and nature of the programming, not the delivery system, would determine demand. Transmission technology typically affects cost more than demand. AIB is a prime example of this. It is in greater demand because it provides better programming at the same, or lower, cost as its competitors. If the Commission's purpose was to develop benchmark rates per channel based on the prices that would prevail in a competitive cable environment, it was error to conclude that market prices would vary primarily and exclusively by delivery mode.[10]

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[9] The fact that the three factors used in the Commission's analysis accounted for 60 percent of the variance is consistent with this conclusion. If any additional factor, e.g., "other" channels, had been included in the analysis, then purely on a statistical basis a higher percentage of the variance would have been accounted for.

[10] The Commission's approach is akin to saying that satellite delivered movie channels carry a higher price than video cassette rentals, but the opposite is true. Video (continued...)

The arbitrariness of the Commission's distinction can be illustrated by other examples. Under the benchmark rate formula, a cable system could raise its rates by nearly a dollar per year by carrying a satellite shopping network selling jewelry or housewares instead of a local channel advertising homes or automobiles. It can charge more for a channel of weather information downlinked from satellite than for NOA radar and local weather updates. And, carrying an alphanumeric or computer generated image, such as a children's reading channel from satellite, yields a higher rate than if the cable system gets the service over landlines or microwave.

The arbitrariness of having different rates for different delivery modes is further evidenced by the wide disparity in prices when <u>all</u> satellite-delivered signals are considered. So-called premium channels are delivered by satellite, although under the Cable Act they are not subject benchmark rate of $0.55 for one nonpremium satellite channel as shown in Appendix A.

Therefore, given that prices for satellite programming vary from $0.55 to $13 -- a difference of 2,363 percent -- the Commission's finding that nonpremium satellite channels are worth 8 cents per month more than local-origination channels is demonstrably arbitrary, to say the least.

Finally, while the effect of the rate structure that concerns AIB is the distinction between national and local programming, the rate structure discriminates against all non-satellite programming, whether national or local. A program distributed nationwide by microwave or landlines, as the television networks once were, or by fiber optic would not be eligible for the preferred rate that is given to satellite-delivered signals. This will retard cable

In short, the benchmark rate structure discriminates against local-origination and other non-satellite signals and does not simulate rate structures that would prevail in a competitive market. It is for this reason arbitrary and unlawful.

V. The Distinction Is Contrary to the Cable Act

Although the Cable Act directs the Commission to regulate basic cable rates, nothing in the Cable Act authorizes the Commission to develop a rate structure that discriminates among programmers or program sources. This is contrary to express Congressional policy. Congress's stated goals were, among other things, to promote diversity of views and information via cable television, to rely on the marketplace to the extent possible, and to continue cable expansion.[12]

The rate structure conflicts with each of this goals. Instead of promoting diversity, it imposes a substantial financial handicap on local-origination programming and non-

[12] The Congressional Statement of Policy reads: "It is the policy of the Congress in this Act to -- (1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media; (2) rely on the marketplace, to the maximum extent feasible, to achieve that availability; (3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems...." Pub. L. 102-385, Oct. 5, 1992, 106 Stat. 1460, 47 U.S.C. §521.

satellite signals. It relies, erroneously, on delivery technology, i.e., satellites, as a surrogate for marketplace demand. And, it establishes economic disincentives for cable operators to expand through addition of non-satellite programs and services.

In sum, Congress directed the Commission to regulate cable rates. It did not direct, or even contemplate, that

Respectfully submitted,

James H. Johnston
Suite 1000
1133 Connecticut Avenue NW
Washington DC 20036
(202) 659-1911

Counsel for Petitioner Atlanta Interfaith Broadcasters, Inc.

Date: June 8, 1993

Appendix A

Incremental Effect of Benchmark Rates
(Per Subscriber)

Total Number of Regulated Channels

		40	41	42	43	44	45
		#					
S	25	0.5490	0.5382	0.5274	0.5166	0.5058	0.4950
A	26	0.5510	0.5402	0.5293	0.5185	0.5076	0.4968
T	27	0.5530	0.5421	0.5312	0.5204	0.5095	0.4986
	28	0.5550	0.5441	0.5332	0.5222	0.5113	0.5004
C	29	0.5570	0.5460	0.5351	0.5241	0.5132	0.5022
H	30	0.5590	0.5480	0.5370	0.5260	0.5150	0.5040
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]